IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7248 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DINESHKUMAR V SONI

Versus

MI KHUMRI(COMMISSIONER OF ELE.,DUTY WING)/COLLECTOR & and another

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Appearance :

Shri C.B. Dastoor for the petitioner

Shri S.P. Hasurkar, Assistant Government Pleader, for the respondents.

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 29/11/2005

ORAL JUDGMENT

1.This petition under Article 226 of the Constitution of India is filed against non-grant of difference of arrears of salary with respect to higher pay-scale with effect from1.6.1987, with interest at the rate of 18% and for further direction to the respondents to grant the benefits of higher pay-scale regularly. Another prayer is made for a declaration that the petitioner is exempted from appearing in the pre-service training examination. Even, the withholding of increments due to the petitioner by the respondents is challenged on the ground of violation of principles of natural justice and the provisions of Articles 14 and 16 of the Constitution of India.

2.The petitioner was selected by the Gujarat Public Service Commission in the month of April

1966 as 'Gujarati Typist' and was appointed in the office of Director, Bureau of Economics & Statistics, subsequently on 1st July 1966. It is the case of the petitioner that on 20th December 1967, the petitioner was transferred to the post of Junior Clerk on his request. The petitioner came to be appointed as Junior Clerk with respondent No.1 and continued to serve there and, even, subsequently, he came to be promoted to the post of Junior Assistant on 12th July 1974 and, thereafter, to the post of Senior Assistant by an order dated 6th November 1981. Earlier, the services of the petitioner came to be regularized by the respondents by an order dated 19th January 1972 and was exempted from appearing in the pre-service training examination to the post of 'Gujarati Typist', in view of the requirement of Rule 29(5) of the Gujarat Non-Secretariate Clerk, Clerk-cum-Typist and Typist (Direct Recruitment Procedure) Rules, 1970 and the petitioner was granted exemption from appearing in the pre-service training examination. The petitioner was given higher pay-scale of Rs.2000-3200 by an order dated 20th March 1992 on certain terms and conditions.

3. The challenge in this petition is made by the petitioner on the basis of communication dated

5th May 1995 addressed by respondent No.1 to the Under Secretary, Department of Energy and Petrochemicals of State of Gujarat, by which, a clarification was sought for with regard to the status of the petitioner in view of the fact that he was granted exemption by the concerned authority from appearing in the pre-service training examination as required under Rule 29 of the Rules. The petitioner, therefore, apprehended recovery of the amount paid to him towards higher pay-scale. He, therefore, prayed for a declaration of this Court that he is not entitled to appear in the pre-service training examination in view of Government Resolution dated 17th April 1970 and the Rules framed therein. He also prayed for fixation of proper pay-scale and release of increments accordingly.

4. This Court (Coram: C.K. Thakker, J.), while issuing Rule on 16th November 1995, passed the following order:

> "Rule. I have heard parties with regard to interim relief. By way of interim relief, it is directed that pending and final disposal of this petition no past recovery will be effected from the petitioner. In the circumstances of the case, office will place this matter for final hearing in the first week of July 1996."

5.Affidavit-in-reply on behalf of respondent No.1 and affidavit-in-rejoinder on behalf of the petitioner were also filed.

6.Shri C.B. Dastoor, learned counsel for the petitioner, has contended that, though the services of the petitioner came to be regularized by the order dated 19th January 1972 and was given exemption by the Competent Authority from appearing in the pre-service training examination, he is deprived of the higher pay-scale and further chance of promotion and his increments have been incorrectly with held. The learned counsel for the petitioner has placed reliance on the order of exemption granted by the competent authority in the month of September 1970 and the order of regularization of service dated 19th January 1972 by the Department of Industries, Mines and Power of the Government of Gujarat, which clearly referred to the provisions of paragraph 7 of the Government Resolution dated 17.4.1970 and the benefits given to the petitioner under Rule 29(1)(5) of the Rules. Subsequently, according to the petitioner, he was promoted to the posts of Junior Assistant and Senior Assistant. The learned counsel for the petitioner, therefore, submitted that the petitioner is entitled to the benefits claimed

in the prayer clauses.

7. Shri S.P. Hasurkar, learned Assistant Government Pleader for the respondents, has mainly relied upon the affidavit in reply filed on behalf of the respondents and submitted that since the petitioner himself had opted for the transfer initially in the year 1967 from the post of Junior Typist to post of the Junior Clerk and had not cleared the pre-service training examination, he is not entitled to any benefit claimed by him in the present petition. The learned Assistant Government Pleader has further submitted that the provisions of Rule 29 of Government Resolution dated 17th April 1970 are not applicable to the case of the petitioner and even other Government Resolutions dated 21st March 1991 and 18th December 1991 issued by the Finance Department of the State of Gujarat are also not applicable. He has further submitted that, since the petitioner has given an undertaking before the authority that, if the amount is found to be paid in excess towards higher pay-scale, the recovery thereof can be effected by the authority and the petitioner would pay up such amount without any protect. It was further submitted that the cadres of Clerks and Typists were not inter-changeable and, for the first

time, after the recruitment rules were framed with effect from 7.5.1977, the benefit can accrue to an employee, who was appointed regularly in the cadre of Clerk and who had completed 2 years as on 1st April 1976 as per the Government Resolution dated 10.11.1976. It was further submitted that the petitioner had never made any representation to the concerned authority about the non-grant of the higher pay-scale. Therefore, it was urged that the extra-ordinary jurisdiction under Article 226 of the Constitution may not be exercised in the present petition.

8.Having heard the learned counsel for the parties and on going through the record of the case, it is apparent that the respondents have not passed any order of recovery of any arrears paid to the petitioner and no order is placed on record of the petition of withholding increments due to the petitioner by the concerned authority. So far as the past recovery of arrears is concerned, the petitioner is already protected by the interim order dated 16.1.1995 by this Court.

9.Having regard to the facts and circumstances of the case, it is borne out from the record that the petitioner was already taken out and

absolved in the establishment of respondent No.1 on regular basis. The petitioner completed two years of service on or before 31st December 1968. Not only that, but the Department of Gas, Mines and Power, accorded their approval with the concurrence of the General Administration Department, so as to regularize the service of the petitioner in accordance with Rule 29 of Government Resolution dated 17th April 1970. The petitioner was promoted to the post of Junior Assistant and also to the post of Senior Assistant and, by order dated 28th March 1992, higher pay-scale was granted.

10.In the back-drop of the above facts,the respondent-authority is directed to consider the claim of the petitioner of fixation of higher pay-scale with effect from 1.6.1987 and the request to release increments withheld by the respondent-authority and to finalize his claim with regard to service conditions. The petitioner is directed to make representation to the competent authority for the grievances as agitated in the petition and highlight all the above aspects as discussed hereinabove. If such a representation is made by the petitioner within two weeks from the date of receipt of certified copy of the order of this Court, the concerned authority is directed to decide the

representation of the petitioner with regard to fixation of higher pay-scale with effect from 1.6.1987 and his grievance about the stoppage/withholding of increments, as expeditiously as possible, but not later than eight weeks from the date of receipt of such representation along with the order of this Court, after giving an opportunity of hearing to the petitioner, in accordance with law. In the meantime, no past recovery will be effected from the petitioner.

11. In view of the above directions, no further order is required to be passed at this stage.

12. Rule is discharged accordingly with no order as to costs.

(Anant S. Dave, J.)

(swamy)